

BEFORE THE BOARD OF REALTY REGULATION
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 24.210.667 and 24.210.661)
related to continuing real estate)
education and new licensee mandatory)
continuing education - salespersons)

TO: All Concerned Persons

1. On December 22, 2005, the Board of Realty Regulation published MAR Notice No. 24-210-27 regarding the public hearing on the proposed amendment of the above-stated rules, at page 2546 of the 2005 Montana Administrative Register, issue no. 24.

2. On January 13, 2006, a public hearing was held on the proposed amendment of the above-stated rules in Helena. Testimony and comments were received at the hearing. Comments were also received by the closing of the comment period on January 20, 2006.

3. The board has thoroughly considered the comments and testimony received. A summary of the comments received and the board's responses are as follows:

COMMENT 1: Some commenters stated they were in support of the elimination of continuing education ("CE") carry over hours. They believe the elimination of carry over would lead to more professionalism. One comment even suggested the board require more hours and adopting stricter criteria for initial licensing.

RESPONSE 1: The board agrees with the comment that eliminating the carry over hours will result in more professionalism among the licensees. In regard to the comments suggesting more hours and stricter licensing criteria, the board responds that at this time the board is only looking at an alternative reporting requirement for continuing education, not the hourly requirement itself or the requirements to initially obtain a license.

COMMENT 2: Some commenters opposed the elimination of CE carry over hours without stating why they were opposed.

RESPONSE 2: The elimination of carry-over will bring many benefits to the licensees and the board including allowance for on-line tracking (which is unavailable on the current database), providing one central place to track continuing education, and elimination of the annual CE audit. Additionally, the current carry over system discourages licensees from completing 12 hours of education every year because they could rely on older carry over credits to fulfill their CE

requirement. Therefore, elimination of carry over will also lead to increased professionalism of licensees by requiring licensees to complete 12 hours of education every year which necessarily means that the education will be more current than if credits are carried over from previous years.

COMMENT 3: Some commenters believe that elimination of carry over will result in unfairness to licensees who currently have carry over hours because those licensees would potentially lose the hours if the rule is adopted.

RESPONSE 3: The board agrees with the comment concerning the loss of accrued carry over hours. In order to avoid this loss, the board will delay the implementation date of elimination of carry over hours to 2007. This will provide licensees an opportunity to use their excess carry over hours for the 2006 requirement period. This will be a one-time extension. Beginning in January 1, 2007, no carry over will be recognized. Therefore, ARM 24.210.667(5) will not be deleted as originally proposed. Instead it has been amended to read as follows:

"(5) For the reporting period ending December 31, 2006, no more than six hours of elective topics may be carried over from a previous year. No mandatory hours may be carried over except as elective credit. For the reporting period beginning January 1, 2007, no carry over hours will be recognized or allowed."

The change also results in the renumbering of the subsequent sections of the rule.

COMMENT 4: Some commenters stated their belief that the rule requiring elimination of carry over hours was driven by educators who wanted all licensees to complete 12 hours of education every year. These commenters also believe that adoption of this rule would discourage licensees from taking extra classes.

RESPONSE 4: The elimination of carry over was not driven by educators. The intent is to increase professionalism by requiring 12 current continuing education credits every year, to allow for on-line tracking currently unavailable on the current database, to provide one central place to track continuing education and to eliminate the annual CE audit. The current carry over system discourages licensees from completing 12 hours of education every year.

COMMENT 5: Some commenters stated that the current carry over scheme provides scheduling flexibility which allows the licensee to better plan their CE. Also, the scheduling is more convenient and allows licensees to take classes that have information that is useful to them.

RESPONSE 5: The board agrees that the elimination of carry over will require additional planning on the licensee's part when scheduling CE. However, the board concludes that the advantages of eliminating carry over outweigh the drawbacks of the carry over elimination. The benefits of eliminating carry over include increased professionalism, on-line tracking, and elimination of the annual CE audit. Elimination of the carry over will not prevent licensees from taking classes that are useful to

them. Licensees should always be pursuing approved courses that provide information useful to them.

COMMENT 6: Several commenters believe that the inability to electronically monitor carry over hours is an invalid reason for changing the rule because computer programs can be adapted to track carry over.

RESPONSE 6: The database used by all licensing programs in the Business Standards Division does not have a place to house the carry over information. Even if it were collected, there is no mechanism to track it in the database. Because this database is used by all licensing boards and programs in the Business Standards Division, it will not be modified to accommodate tracking carry over hours.

COMMENT 7: Several licensees stated that they pay good money to maintain their licenses and a record of carry over education credits is included in the existing fees.

RESPONSE 7: Recording and tracking of carry over hours is not currently done by the board. Nor do the licensing fees currently support this function. Therefore, enactment of this tracking system will actually provide more benefit/service to the licensees.

COMMENT 8: The board's goals should be to keep things simple and not enable licensees who cannot track their own continuing education hours.

RESPONSE 8: Implementation of this tracking system will actually simplify and streamline the process and will eliminate the annual CE audit. This will provide more efficiency in the reporting process.

COMMENT 9: A couple of commenters stated that elimination of carry over hours would keep licensees from attending courses that both interest and educate licensees because they could not use the excess hours for meeting CE requirements.

RESPONSE 9: The board does not agree with this comment. The elimination of carry over would actually require licensees to complete a minimum of 12 hours of education every year. This would result in more current education completed on an annual basis rather than carrying some hours over from a prior year. Licensees should always take courses that interest and educate them.

COMMENT 10: Several commenters stated that the elimination of carry over should not occur until 2007. This would give licensees adequate notice so they could use up their carry over or at least be notified it would be eliminated. It would also allow education providers adequate time to plan for new deadlines.

RESPONSE 10: The board agrees. The rule will be adopted with an implementation date of January 1, 2007. This will give the licensees adequate notice and the opportunity to use their carry over hours.

COMMENT 11: A couple of commenters stated that it is unfair to hold instructors responsible for accurately recording continuing education attendance information. The course provider/administrator should be the responsible party for reporting course attendance.

RESPONSE 11: The board does not license, certify, approve or track the course provider/administrator. However, the board has jurisdiction to enforce certain requirements on the instructor. The board does recognize that some instructors contract with or arrange for another person to perform some duties. The proposed rule provides some flexibility to the instructor by allowing the "instructor or their designee" to report licensee attendance. However, the instructor will ultimately be responsible for the provision of and the accuracy of the information.

COMMENT 12: Some commenters stated that ten days is not enough time to allow for reporting of course attendance.

RESPONSE 12: The board agrees with the comments. The reporting requirement has been amended to extend the time to 20 days.

COMMENT 13: A couple of commenters believe the instructor or assignee should be absolved from liability if the student's name is skipped by error. The commenters expressed their concern about liability for incorrect data entry.

RESPONSE 13: The board does not believe instructors have additional liability under the proposed reporting system. The board does not have the statutory authority to protect instructors against liability to a licensee for the instructor's negligence.

COMMENT 14: A couple of commenters stated that instructors should be able to provide a faxed roster to the board and not be expected to do the board staff's work to record hours.

RESPONSE 14: Currently this function (recording hours) is not performed by the board staff. The board does not have the staff capability to input all education hours for every licensee. Nor do the licensing fees currently support this function. The proposed format is web-based with access for all providers through the internet.

COMMENT 15: One commenter opposed changing the renewal date stating that licensees are used to the term being year-end.

RESPONSE 15: The pertinent sections of this rule only refer to new licensees. However, in response to the comment, the board has determined that the changes to new licensee renewal should not be effective until calendar year 2007. The board will amend the adopted rule to delay implementation until January 2007. This will allow adequate time to notify new licensees of the change.

The last section in the rule does refer to 'all licensees'. However, licensees other than new licensees are not scheduled to renew until 2007 anyway. Therefore, there is adequate time for those licensees to prepare for an October renewal date. Consequently, that section of the rule will be adopted as proposed.

COMMENT 16: One commenter is opposed to all the proposed changes to the administrative rules because they are cumbersome and do not improve the process. Additionally, the commenter feels the changes shift the board's responsibility and liability to others concerning the reporting of a licensee's education credits.

RESPONSE 16: The proposed changes are not unduly cumbersome especially given the benefits. The proposed changes will increase professionalism of all licensees, assist them in maintaining their current continuing education and will eliminate the annual continuing education audit. Moreover, the function of recording hours is not currently performed by the board staff. The board does not have the staff capability to input all education hours for every licensee. Nor do the licensing fees currently support this function. The proposed format is web-based with access for all providers through the internet. The board does not believe instructors have additional liability under the proposed reporting system.

COMMENT 17: A commenter asked what are the methods of reporting that are being considered.

RESPONSE 17: The format is web-based with access through the internet.

COMMENT 18: A commenter asked what sort of proof will the person have to prove they have attended a given class should the instructor fail to properly report all students in the class.

RESPONSE 18: Instructors will still be required to provide completion certificates to licensees attending their course.

COMMENT 19: A commenter asked if the date for CE credit reporting is changed to October 31 of each year – will that also effect the due date for dues each year – since they go hand in hand?

RESPONSE 19: Yes. The department has proposed changing the renewal date for licensees. The board is changing the CE reporting date to coincide with the renewal date being established by the department.

4. The board has amended ARM 24.210.661 and ARM 24.210.667 with the following changes, stricken matter interlined, new matter underlined:

24.210.661 NEW LICENSEE MANDATORY CONTINUING EDUCATION - SALESPERSONS (1) All new sales licensees issued in 2006 are required to complete the board mandated new licensee mandatory continuing education requirement by December 31, 2006 ~~following their original license issue~~

date. Effective January 1, 2007, all new sales licensees are required to complete the board mandated new licensee mandatory continuing education requirement by the October 31 following their original license issue date.

(2) New sales licensees issued in 2006 will receive an interim license that will expire ~~October~~ December 31, 2006. Effective January 1, 2007, all new sales licensees will receive an interim license that will expire October 31 of the year of the initial license date.

(3) through (5) remain as proposed.

AUTH: 37-1-131, 37-1-306, 37-1-319, 37-51-203, MCA

IMP: 37-1-131, 37-1-141, 37-1-306, 37-1-319, 37-51-202, 37-51-204, MCA

24.210.667 CONTINUING REAL ESTATE EDUCATION (1) through (4) remain as proposed.

(5) For the reporting period ending December 31, 2006, no more than six hours of elective topics may be carried over from a previous year. No mandatory hours may be carried over except as elective credits. For the reporting period beginning January 1, 2007, no carry over hours will be recognized or allowed.

~~(6) (5)~~ No course shall be repeated for credit in the same reporting year.

(6) through (10) remain as proposed but are renumbered (7) through (11).

~~(11) (12)~~ All continuing education instructors or their designee must report licensee attendance at approved continuing education offerings to the board within ~~40~~ 20 days of the course offering.

(12) through (14) remain as proposed, but are renumbered (13) through (15).

AUTH: 37-1-131, 37-1-306, 37-1-319, 37-51-203, 37-51-204, MCA

IMP: 37-1-131, 37-1-141, 37-1-306, 37-1-319, 37-51-202, 37-51-203, 37-51-204, MCA

BOARD OF REALTY REGULATION
TERRY HILGENDORF, CHAIRPERSON

/s/ MARK CADWALLADER

Mark Cadwallader
Alternate Rule Reviewer

/s/ KEITH KELLY

Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State April 24, 2006